No. 10-1491

IN THE

Supreme Court of the United States

ESTHER KIOBEL, INDIVIDUALLY AND ON BEHALF OF HER LATE HUSBAND, DR. BARINEM KIOBEL, *et al.*,

Petitioners,

v.

ROYAL DUTCH PETROLEUM CO., *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF PRODUCT LIABILITY ADVISORY COUNSEL, INC., AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

Of Counsel:
HUGH F. YOUNG, JR.
PRODUCT LIABILITY ADVISORY COUNSEL, INC.
1850 Centennial Park Drive
Suite 510
Reston, VA 20191
(703) 264-5300

ANNE E. COHEN
Counsel of Record
DAVID W. RIVKIN
EROL N. GULAY
SUSAN E. MOSER
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000
aecohen@debevoise.com

Attorneys for Amicus Curiae

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240309

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This brief is filed on behalf of the Product Liability Advisory Council, Inc. as *amicus curiae* in support of Respondents.[1]

INTEREST OF *AMICUS CURIAE*

Amicus Curiae Product Liability Advisory Council, Inc. ("PLAC") is a non-profit association of over 100 corporate members representing a broad cross-section of American and international product manufacturers,[2] who seek to contribute to the improvement and reform of law in the United States and elsewhere, especially that governing the liability of manufacturers of products. Since 1983, PLAC has filed 956 briefs as *amicus curiae* in both state and federal courts, including 95 in this Court, presenting the perspective of product manufacturers seeking fairness and balance in the application and development of the law as it affects product liability and similar claims

PLAC is well situated to address issues raised in this matter. PLAC member companies are leaders in the energy, automotive, pharmaceutical,

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1 Pursuant to Supreme Court Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amicus* or its counsel, make a monetary contribution to the preparation or submission of this brief. The parties have consented to the filing of this brief in letters that are filed with the Clerk of the Court.

2 A list of PLAC 's current corporate membership is included as Appendix A to this brief. Shell Oil Company is a PLAC member.

food and other industries that have been involved in actions alleging violations of international norms under the Alien Tort Statute, 28 U.S.C. § 1350 ("ATS"). Many PLAC members have headquarters or operations outside the United States, and some PLAC members or their related entities have been named as defendants in ATS litigation. PLAC respectfully submits this brief as *amicus curiae* to address certain arguments made by Petitioners regarding the state of ATS litigation in the federal courts and to describe the cost of such litigation on corporate defendants.

SUMMARY OF ARGUMENT

In *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), this Court limited claims under the ATS to violations of international norms with content no "less definite" and of the same level of "acceptance among civilized nations" as the "historical paradigms familiar" in 1789. *Id.* at 732. Even when a norm might meet requirements of definiteness and acceptance, the Court further emphasized the need to exercise "an element of judgment about the practical consequences of making that cause available to litigants in the federal courts." *Id.* at 732-33.

Chief Judge Jacobs addressed such prudential concerns in his opinion below, concurring in denial of rehearing and rehearing en banc. *Kiobel v. Royal Dutch Petroleum* Co., 642 F.3d 268, 271-72 (2d Cir. 2011) (prohibiting ATS actions against corporations would "promote international comity, . . . administer efficient handling of cases, and . . . avoid the use of our courts to extort settlements"). In particular,

Judge Jacobs noted that artful pleading "would delay dismissal of ATS suits against corporations; and the invasive discovery that ensues could coerce settlements that have no relation to the prospect of success on the ultimate merits." *Id.* at 271. Among the other factors counseling against allowing ATS claims to go forward against corporate defendants were "bad public relations or boycotts" and "pressure to remove contingent reserves from the corporate balance sheet[s]." *Id.*

Petitioners argue that Judge Jacobs' concerns are overblown and unsupported. They say that "there have been only a handful of settlements in corporate ATS cases in the last two decades . . . . Many cases have been dismissed and a relatively small number of cases are pending." Pet'rs' Br. at 57, n.55. Petitioners contend further that "ATS cases against corporations constitute an insignificant portion of the dockets of federal courts," *id.* at 60, and "the courts have an arsenal of tools to limit ATS cases deemed not to meet the exacting standards in *Sosa*," *id.* at 59. *See also Kiobel*, 642 F.3d at 274 (Leval, J., dissenting) (noting that courts have the power to reduce excessive jury verdicts). In closing their brief, Petitioners say that the "policy reasons expressed in Chief Judge Jacobs' opinion" would "shield the I.G. Farbens of today's world from tort liability for complicity in international law violations such as genocide and crimes against humanity." Pet'rs' Br. at 61.

In response to Petitioners' arguments regarding the "arsenal" of procedural devices available to protect corporate defendants from insubstantial or inappropriate ATS claims, *amicus*

undertook a review of reported cases and PACER district court docket records involving ATS claims that name corporate defendants. That exercise indicates that approximately half of the ATS cases have been brought against corporate defendants; that the vast majority have been filed in the past dozen years; that such cases take significantly longer to resolve than federal civil cases on average; that very few involve direct conduct by the accused corporate defendant; that, simply as a function of time and the cost of defense, including physical and temporal distance from the site of the alleged conduct, ATS cases can be extraordinarily expensive to litigate; and that in addition to the settlement pressure noted by Judge Jacobs, the reputational impact of being accused of genocide and other heinous acts require corporations to defend themselves vigorously.

ARGUMENT

I. ATS Lawsuits Are Excessively Costly, Complex, and Time-Consuming

Most ATS claims against corporate defendants are based on the direct conduct not of those entities but rather of third-parties in countries far from the federal district courts in which the cases are filed, often occurring decades ago, allegedly in violation of international law norms. Almost by definition, such cases involve significant legal research, briefing, and motions, as well as intensive and time-consuming fact-gathering.

The number of ATS claims naming corporate defendants has risen steadily in recent years.

Review by *amicus*[3] indicates that of the approximately 245 ATS cases identified, approximately 120 name at least one corporate defendant.[4] Moreover, the research showed that of those 120 actions, 88% were filed on or after 2000, and 48% were filed on or after 2008. *See also* JONATHAN DRIMMER, U.S. CHAMBER INST. FOR LEGAL REFORM, THINK GLOBALLY, SUE LOCALLY: OUT-OF-COURT TACTICS EMPLOYED BY PLAINTIFFS, THEIR LAWYERS, AND THEIR ADVOCATES IN TRANSNATIONAL TORT CASES 5 (2010) (noting that roughly one-third of the corporate cases involving ATS claims remain pending before federal trial or appellate courts).

ATS cases impose substantial litigation costs. They take significantly longer on average to resolve than do federal civil cases, can involve a large number of parties and counsel, and frequently result in multiple trips to the Courts of Appeals (in addition to trips overseas to view premises and meet witnesses). *Amicus'* research indicates that out of 59 cases brought against corporations for which there is a reported decision and where the ATS claims are a

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[3] *See* Appendix B for a chart that lists all ATS cases naming at least one corporate defendant.

[4] The *amicus'* review of ATS cases was based on reported decisions and district court docket records and included both closed and open cases. A total of 245 lawsuits were identified raising an ATS claim. This calculation counted as one action similar or related cases that were later consolidated, and, as a result, represents a conservative estimate.

primary focus of the action,[5] the average length-of-time from filing until final disposition or until its current status[6] was over 63 months, or over five years. Such cases that are taken to the Courts of Appeals take even longer, lasting an average of over 85 months, or more than seven years. By comparison, the median time for a civil action in the federal court system is 7.3 months from filing to disposition. *See Statistical Tables for the Federal Judiciary, Table C-5*, U.S. Courts (June 30, 2011), http://www.uscourts.gov/uscourts/Statistics/StatistiCalTablesForTheFederalJudiciary/2011/C05Jun11.pdf.

Although the present case has been in litigation for over nine years, *see* Resp'ts Br. at 45, others have gone on even longer. *See, e.g., Sarei v. Rio Tinto, PLC*, Nos. 02-56256, 02-56390, 09-56381, 2011 WL 5041927 (9th Cir. Oct. 25, 2011) (pending case in litigation for approximately 11 years); *Bowoto v. Chevron Corp.*, 621 F.3d 1116 (9th Cir. 2010) (ATS portion of pending case litigated for eight years); *Presbyterian Church Of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2d Cir. 2009) (litigated

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[5] For purposes of the length-of-time analysis, *amicus* did not include cases where international-law violations were not alleged or where bare allegations of "violations of international law" were simply tacked on to a laundry list of other causes of action.

[6] *Amicus'* review includes cases that are still pending. For those cases, the date of the last docket entry was used, rather than the final disposition. As such, the actual average length to closure will ultimately be longer once those cases are resolved.

for approximately nine years); *Aldana v. Del Monte Fresh Produce N.A., Inc.*, 578 F.3d 1283 (11th Cir. 2009) (litigated for approximately eight years); *Jama v. Esmor Corr. Services, Inc.*, 577 F.3d 169 (3d Cir. 2009) (litigated for approximately 13 years); *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009) (dismissed after eight years); *Wiwa v. Shell Petroleum Dev. Co. of Nigeria Ltd.*, 335 F. App'x 81 (2d Cir. 2009) (litigated for 13 years); *Khulumani v. Barclay Nat'l Bank Ltd.*, 509 F.3d 148 (2d Cir. 2007) (pending case in litigation for approximately nine years); *Bano v. Union Carbide Corp.*, 198 F. App'x 32 (2d Cir. 2006) (litigated for over 20 years); *Bigio v. Coca-Cola Co.*, 239 F.3d 440 (2d Cir. 2000) (ATS claims dismissed after eight years). Multiple appeals are sometimes taken in these matters, adding to the time and resources expended. *Amicus'* review indicates that an ATS case involving a corporate defendant that reaches the Courts of Appeals is appealed, including certiorari petitions to this Court, an average of about two times during the pendency of the action.

In addition to lasting years, many ATS cases name numerous corporate defendants, and involve a significant number of counsel.[7] *See, e.g., Saleh v. Titan Corp.*, 580 F.3d 1 (D.C. Cir. 2009) (litigated for over four years, involving five corporate defendants and ten law firms, including two representing corporate defendants, six representing individual defendants, and two representing plaintiffs); *Viet. Ass'n for Victims of Agent Orange v. Dow Chem. Co.*,

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[7] When calculating the number of counsel, information from the case's district court docket was used.

517 F.3d 104 (2d Cir. 2008) (litigated for four years, involving 36 corporate defendants and 20 law firms, including 11 representing corporate defendants, and nine representing plaintiffs); *In re S. Afr. Apartheid Litig.*, 633 F. Supp. 2d 117 (S.D.N.Y. 2009) (litigated for approximately nine years, involving 43 corporate defendants and 27 law firms, including nine representing plaintiffs, and 18 representing corporate defendants). Corporate defendants often retain several experts to write reports and testify on a number of issues, including public international law, and the domestic law, legal structure and general conditions of the country where the alleged conduct occurred. *See, e.g., In re Agent Orange Product Liability Litig.*, 373 F. Supp. 2d 7 (E.D.N.Y. 2005) (six expert reports on international law submitted by defendants); *Turedi v. Coca Cola Co.*, 460 F. Supp. 2d 507 (S.D.N.Y. 2006) (four expert reports on Turkish law submitted by defendants filed); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 453 F. Supp. 2d 633 (S.D.N.Y. 2006) (four expert reports on political violence and community development in Sudan).

A sample of docket sheets from ATS cases shows significant litigation activity over the course of many years, with multiple briefing rounds, numerous amended complaints, and several reported court opinions. *See, e.g., Khulumani v. Barclay Nat'l Bank Ltd.*, 509 F.3d 148 (2d Cir. 2007) (four complaints, seven rounds of briefing, and six court opinions reflected in 80-page district court docket sheet); *Bowoto,* 621 F.3d 1116 (nine complaints, 29 reported court opinions, and 2,326 docket entries in 254-page district court docket sheet); *In re Chiquita*

Brands Int'l, Inc. Alien Tort Statute and S'holder Derivative Litig., 792 F. Supp. 2d 1301 (S.D. Fla. 2011) (three complaints, two reported court opinions, and 508 docket entries in 490-page district court docket sheet); *Wiwa*, 335 F. App'x 81 (six complaints, twelve reported court opinions, and 525 docket entries in 106-page district court docket sheet); *Presbyterian Church Of Sudan*, 582 F.3d 244 (three complaints, 13 reported court opinions, and 435 docket entries in 72-page district court docket sheet).

Common sense alone indicates that the complexity, size, and duration of ATS lawsuits give rise to enormous litigation costs. Studies about general litigation costs show that in major cases that survive the dismissal phase, the average outside legal costs (excluding discovery) borne by Fortune 200 companies is $2,019,248 per case, while the average cost of discovery can range from $2,354,868 to $9,759,900 per case. LAWYERS FOR CIVIL JUSTICE ET AL, LITIGATION COST SURVEY OF MAJOR COMPANIES 3, app. 1 at 14 (2010). Other studies have confirmed that higher stakes and longer processing times result in greater litigation costs, with a 1% increase in stakes associated with a 0.25% increase in reported costs, and a 1% increase in case duration associated with a 0.26% increase in costs, all else equal. EMERY G. LEE III & THOMAS E. WILLGING, LITIGATION COSTS IN CIVIL CASES: MULTIVARIATE ANALYSIS 7 (2010). Factual complexity also is associated with higher litigation costs. *Id.* The studies support the proposition that ATS lawsuits are especially expensive to defend — they last for long periods of time, are factually and legally complex, and involve transnational discovery and

litigation practice, high monetary and reputational stakes, and allegations of conduct so heinous that the defendant has almost no choice but to defend itself vigorously. Further, ATS-related suits typically also involve costs associated with experts and correspondent counsel in the country in which the alleged conduct occurred, which adds to the already high price tag.

Petitioners attempt to minimize the costs and burdens for defendants associated with ATS litigation. *See* Pet'rs'. Br. at 57–61. They contend that "courts have an arsenal of tools to limit ATS cases deemed not to meet the exacting standards in *Sosa*," *id.* at 59., and that, despite the number of law firms representing claimants involved in the cases cited above, "[t]he obstacles facing ATS plaintiffs suing corporations are daunting." *Id.* at 60. But even cases that are almost patently defective under *Sosa* can last for years and involve significant costs. *See, e.g.*, *Orkin v. Swiss Confederation*, No. 11–1414, 2011 WL 4822343 (2d Cir. Oct. 12, 2011) (after 22 months, holding that defendant's passive receipt of a Van Gogh drawing sold under political and economic duress for safe passage out of Nazi Germany is an insufficiently-pled international law violation); *Prince Hotel, SA v. Blake Marine Grp.*, 433 F. App'x 706 (11th Cir. 2011) (after litigating for one year, affirming dismissal for lack of subject matter jurisdiction when misrepresentation, in the form of unpaid hotel charges, was pled as an ATS violation); *see also Hamid v. Price Waterhouse*, 51 F.3d 1411 (9th Cir. 1995) (after litigating for four years, affirming dismissal of ATS claim when violations alleged were fraud, breach of fiduciary duty, and

misappropriation of funds); *Daventree Ltd. v. Republic of Azer.*, 349 F. Supp. 2d 736 (S.D.N.Y. 2004) (after four years, dismissing claims of investor fraud and extortion brought under the ATS); *Arndt v. UBS AG*, 342 F. Supp. 2d 132, 139 (E.D.N.Y. 2004) (dismissing ATS claim when plaintiffs' causes of action were "predicated on garden variety commercial claims, including fraud, unjust enrichment, conversion and misrepresentation"); *Mendonca v. Tidewater, Inc.*, 159 F. Supp. 2d 299 (E.D. La. 2001) (six years after complaint was filed, holding ATS pleading deficient when law of nations violation alleged was wrongful termination); *Kruman v. Christie's Int'l. PLC*, 129 F. Supp. 2d 620, 627 (S.D.N.Y. 2001) (dismissing plaintiffs' ATS claim based on an accusation of price fixing as "border[ing] on the frivolous"); *Maugein v. Newmont Mining Corp.*, 298 F. Supp. 2d 1124 (D. Colo. 2004) (after three years, dismissing for failure to state a claim when plaintiff alleged bribery, extortion and defamation as violations of ATS).

In support of their contention that federal courts know how to dispose of cases on inappropriate forum or other bases, Petitioners list several ATS cases which eventually were dismissed. However, these citations illustrate how costly and time-consuming rejected ATS lawsuits are for corporations. Of the six cases noted, *see* Pet'rs' Br. at 59-60, n.57-59, four lasted several years before they were dismissed. *Gonzalez-Vera v. Kissinger*, 449 F.3d 1260 (D.C. Cir. 2006), *cert. denied*, 549 U.S. 1206 (2007) (litigated for over four years); *Mamani v. Berzain*, 654 F.3d 1148 (11th Cir. 2011) (litigated for three-and-a-half years); *Flomo v. Firestone Natural*

Rubber Co., LLC, 643 F.3d 1013 (7th Cir. 2011) (litigated for over five years); *Sarei*, 2011 WL 5041927 (litigated for 11 years). Despite ultimate success, defendants spend years accused of genocide and other almost unimaginable categories of evil.

II. Corporate Role in Alleged Conduct is Indirect and Attenuated

Corporate defendants in ATS cases are rarely direct or even indirect actors in the conduct alleged to be in violation of an international norm.[8] ATS suits often attempt to hold corporations liable for violations of international law committed by other parties, because the direct actor is a government protected from liability on account of sovereign immunity, an individual state actor against whom large damage awards cannot be sought, or a party no longer in existence.

In matters where Plaintiffs cannot reach a protected actor, the ATS has been used to allege that a corporation aided and abetted violations

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[8] Most ATS suits which allege direct corporate violations of international law are brought against private security contractors deployed in active war zones. *See, e.g., Al Shimari v. CACI Int'l., Inc.*, 658 F.3d 413 (4th Cir. 2011) (private military contractor accused of war crimes and torture while providing interrogation services at Abu Ghraib prison during Iraq War); *Saleh v. Titan Corp.*, 580 F.3d 1 (D.C. Cir. 2009) (same); *Estate of Manook v. Research Triangle Inst., Int'l*, 759 F. Supp. 2d 674 (E.D.N.C. 2010) (private military contractor accused of war crimes for allegedly killing civilians during Iraq War); *In re XE Serv. Alien Tort Litig.*, 665 F. Supp. 2d 569 (E.D. Va. 2009) (same).

committed by local police, military forces, private security contractors, among others, during international or civil conflict situations.[9] In many instances, lawsuits are brought against corporations that do business in countries engaged in international or civil conflict and seek to hold the corporation liable for the alleged abuses actually committed by government forces. These lawsuits effectively name the corporation as a surrogate for governments immune from civil liability in U.S. courts.[10] Unlike the typical domestic tort litigation

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9 ATS lawsuits relate to conduct arising in roughly 60 different countries, most commonly from troubled regions of the world with authoritarian or non-democratic governments, such as the Middle East (23% of ATS lawsuits) and Iraq in particular; South America (20%) and Colombia in particular; Africa (15%) and Nigeria in particular; and Asia (15%). DRIMMER, THINK GLOBALLY, SUE LOCALLY, at 18.

10 *See, e.g., Sarei v. Rio Tinto, PLC*, 550 F.3d 822 (9th Cir. 2008) (Rio Tinto accused of aiding and abetting war crimes committed by military forces in Papua New Guinea); *Aziz v. Alcolac, Inc.*, 658 F.3d 388 (4th Cir. 2011) (by supplying Iraqi government with chemical products that were then used to manufacture mustard gas, Alcolac allegedly aided and abetted war crimes committed by Iraqi military); *Fiouris v. The Turkish Cypriot Comty*, No. 10-1225 (D.D.C. filed July 20, 2010) (HSBC's continuing operation in Northern Cyprus allegedly aided and abetted international-law violations committed during and after Turkey's invasion of the island); *Doe v. Exxon Mobil Corp.*, 654 F.3d 11 (D.C. Cir. 2011) (Exxon's Indonesian subsidiary allegedly aided and abetted war crimes committed by Indonesian military during efforts to protect corporation's operations); *Bowoto v. Chevron Corp.*, 621 F.3d 1116 (9th Cir. 2010) (Chevron's Nigerian subsidiary allegedly aided and abetted extrajudicial killings and

regime, where a corporation being sued for attenuated conduct can often implead and/or seek indemnity from the actor responsible for the direct conduct, the nature of ATS claims limits the ability of the distant defendant to spread the risk and responsibility.

The classes of ATS suits are not confined to recent conflicts; rather, in the last decade, dozens of ATS lawsuits have been filed seeking to hold

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torture committed by Nigerian military during attempt to intervene in local population's unlawful occupation of corporation's oil facilities); *Roe v. Unocal Corp.*, 70 F. Supp. 2d 1073 (C.D. Cal. 1999) (Unocal subsidiary allegedly aided and abetted forced labor imposed by Myanmar military during construction of oil pipeline); *Khulumani v. Barclay Nat'l Bank Ltd.*, 509 F.3d 148 (2d Cir. 2007) (dozens of multinational corporations that did business in South Africa during apartheid accused of aiding and abetting human rights abuses committed by apartheid regime); *Corrie v. Caterpillar, Inc.*, 403 F. Supp. 2d 1019 (W.D. Wash. 2005) (Caterpillar accused of aiding and abetting alleged war crimes committed by Israeli military using Caterpillar's machinery in Gaza Strip); *Abecassis v. Wyatt*, 785 F. Supp. 2d 614 (S.D. Tex. 2011) (U.S. corporations that allegedly violated terms of Iraq Oil for Food program accused of indirectly financing, and aiding and abetting in, Palestinian terrorism committed against Israel); *Mastafa v. Chevron Corp.*, 759 F. Supp. 2d 297 (S.D.N.Y. 2010) (Chevron accused of aiding and abetting human rights abuses committed by Saddam Hussein's regime due to violations of sanctions and Iraq Oil for Food program, which provided illicit income to Iraq government); *Presbyterian Church Of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244 (2d Cir. 2009) (Talisman's indirect subsidiary allegedly aided and abetted genocide and war crimes committed by Sudanese military during operations designed to protect subsidiary's facilities).

corporations accountable for war crimes and other international-law violations committed by military, political or police forces during war and other conflict scenarios occurring over the course of the last century or more.[11] The distance in time between

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[11] The ATS has been used as a basis for litigation over the **Second World War**, *see, e.g., Deutsch v. Turner Corp.*, 317 F.3d 1005 (9th Cir. 2003); *In re World War II Era Japanese Forced Labor Litig.*, 164 F. Supp. 2d 1153 (N.D. Cal. 2001); *Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank*, No. 10-1884, 2011 WL 1900340 (N.D. Ill. May 18, 2011); *Abrams v. Société Nationale des Chemins de Fer Français*, 175 F. Supp. 2d 423 (E.D.N.Y. 2001); *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117 (E.D.N.Y. 2000); *Iwanowa v. Ford Motor Co.*, 67 F. Supp. 2d 424 (D.N.J. 1999); *Victims of the Hungarian Holocaust v. Hungarian State Railways*, No. 10-868, (N.D. Ill. filed Feb. 9, 2010); *Whiteman v. Fed. Rep. of Austria*, No. 00-8006 (S.D.N.Y. filed Nov. 12, 2002); the **Vietnam War**, *see, e.g., Viet. Ass'n for Victims of Agent Orange v. Dow Chem. Co.*, 517 F.3d 104 (2d Cir. 2008); **South Africa's Apartheid regime**, *see, e.g., Khulumani*, 509 F.3d 148; **Germany's 1890-1915 occupation of South Africa**, *see, e.g., Hereros ex rel. Riruako v. Deutsche Afrika-Linien Gmblt & Co.*, 232 F. App'x 90 (3d Cir. 2007); the **Arab-Israeli conflict**, *see, e.g., Abecassis*, 785 F. Supp. 2d 614; *Linde v. Arab Bank, PLC*, 269 F.R.D. 186 (E.D.N.Y. 2010); *Licci v. Am. Express. Bank Ltd.*, 704 F. Supp. 2d 403 (S.D.N.Y. 2010); *Tamam v. Fransabank Sal*, 677 F. Supp. 2d 720 (S.D.N.Y. 2010); *Corrie*, 403 F. Supp. 2d 1019; *Kaplan v. Al Jazeera*, No. 10-5298 (S.D.N.Y. filed July 18, 2011); the **Conflict in the former Yugoslavia**, *see, e.g., Genocide Victims of Krajina v. L-3 Serv., Inc.*, No. 10-5197, 2011 WL 3625055 (N.D. Ill. Aug. 17, 2011); the **Iran-Iraq War**, *see, e.g., Aziz*, 658 F.3d 388; the **Iraq War (2003-2011)**, *see, e.g., Al Shimari*, 658 F.3d 413; *Saleh v. Titan Corp.*, 580 F.3d 1 (D.C. Cir. 2009); *Estate of Manook.*, 759 F. Supp. 2d 674; *Ibrahim v. Titan Corp.*, 391 F. Supp. 2d 10 (D.D.C. 2005); *Al-Quraishi v. Nakhla*, 728 F. Supp. 2d 702 (D. Md. 2010); *Adhikari v. Daoud & Partners*, No. 09-1237, 2010 WL 744237 (S.D.

the date the conduct took place and the date of filing in these cases adds yet another layer of cost, complexity, and attenuation.

In many of these cases, parent companies, which are often even further removed from the alleged wrongdoing, are also named. *See, e.g., Sarei*, 2011 WL 5041927, at *1, 29 (Anglo-Australian global parent company of subsidiary operating in Papua New Guinea liable for actions committed by military forces there); *Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909, 911-12 (9th Cir. 2011) (German parent company of Mercedes-Benz Argentina accused of

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Tex. Mar. 1, 2010); *In re XE Services Alien Tort Litig.*, 665 F. Supp. 2d 569; *Mohamed v. Erinys Int'l Ltd.*, No. 09-3362 (S.D. Tex. filed Apr. 28, 2010); *Jarallah v. Xe*, No. 09-631 (S.D. Cal. filed Mar. 27, 2009); *Al-Taee v. L-3 Serv.*, No. 08-12790 (E.D. Mich. filed June 30, 2008); **Argentina's "Dirty War,"** *see, e.g., Bauman v. DaimlerChrysler Corp.*, 644 F.3d 909 (9th Cir. 2011); the **Global War on Terror**, *see, e.g., Mohamed v. Jeppesen Dataplan, Inc.*, 614 F.3d 1070 (9th Cir. 2010); **civil war in Sudan**, *see, e.g., Presbyterian Church of Sudan*, 582 F.3d 244; the **Turkish invasion of Cyprus**, *see, e.g., Fiouris v. Turkish Cypriot Cmty*, No. 10-1225 (D.D.C. filed July 20, 2010); and **civil conflict in Colombia**, *see, e.g., Baloco ex rel. Tapia v. Drummond Co., Inc.*, 640 F.3d 1338 (11th Cir. 2011); *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009); *In re Chiquita Brands Int'l, Inc. Alien Tort Statute and S'holder Derivative Litig.*, 792 F. Supp. 2d 1301 (S.D. Fla. 2011); *Mujica v. Occidental Petroleum Corp.*, 381 F. Supp. 2d 1164 (C.D. Cal. 2005); *Estate of Rodriquez v. Drummond Co., Inc.*, 256 F. Supp. 2d 1250 (N.D. Ala. 2003); *Saldana v. Occidental Petroleum Corp.*, No. 11-8957 (C.D. Cal. filed Oct. 20, 2011); *Giraldo v. Drummond Company, Inc.*, No. 09-1041 (N.D. Ala. filed Sept. 29, 2011); *Sinaltrainal v. Nestle USA, Inc.*, No. 06-61623 (S.D. Fla. filed Oct. 31, 2006).

complicity in torture of local plant workers by Argentine security forces); *Bowoto*, 621 F.3d at 1120-22 (American parent corporation of foreign subsidiary accused of aiding and abetting war crimes committed by Nigerian military during operation designed to protect oil facilities against attack); *Presbyterian Church Of Sudan*, 582 F.3d at 249-51 (Canadian parent corporation of indirect subsidiary that held minority stake in consortium established to develop oil fields in Sudan was accused of aiding and abetting war crimes committed by Sudanese military forces providing security to oil project); *Türedi v. Coca-Cola Co.*, 460 F. Supp. 2d 507, 509-10 (S.D.N.Y. 2006), *aff'd*, 343 F. App'x 623 (2d Cir. 2009) (Coca-Cola accused of aiding and abetting torture and other misconduct by local police clearing a sit-in by drivers of company hired by local bottler to deliver product); *Doe v. Nestle, S.A.*, 748 F. Supp. 2d 1057, 1064-66 (C.D. Cal. 2010) (corporations and their subsidiaries accused of aiding and abetting forced labor by purchasing cocoa from Ivory Coast cocoa farms that allegedly employed child slaves).

Several of these ATS suits target corporations for liability arising from efforts by local security forces to protect the company's personnel and operations from violence and sabotage committed by local populations during an internal conflict. *See, e.g., Sarei*, 550 F.3d at 825 (Rio Tinto sought assistance from government after local residents sabotaged Rio Tinto's mine and forced its closure); *Bowoto*, 621 F.3d at 1121-22 (local protesters occupied Chevron's oil platform until they were disbanded by Nigerian military); *Wiwa v. Shell Petroleum Dev. Co. of Nigeria Ltd.*, 226 F.3d 88, 92

(2d Cir. 2000) (Shell sought assistance from Nigerian military after local population protested and disrupted its oil exploration and development operations); *Mujica*, 381 F. Supp. 2d at 1168-69, 1189 (Occidental sought assistance from Colombian security forces after left-wing insurgents engaged in violence and sabotage against its oil pipeline); *Saldana*, No. 11-8957 (same); *Giraldo*, No. 09-1041 (Drummond sought assistance from local security forces after sustained guerilla attacks against its coal mining operations); *Shiguango v. Occidental Petroleum Corp.*, No. 06-4982 (C.D. Cal. filed Aug. 25, 2009) (Occidental sought assistance from Ecuadorian military in response to protests that disrupted its operations); *In re Chiquita Brands Int'l, Inc.*, 792 F. Supp. 2d 1301 (allegations that Chiquita formed an agreement with United Self-Defense Forces of Colombia paramilitaries to secure plantations and minimize guerilla presence in the area).

Corporations in these suits often are caught in the middle of conflicts between local populations and their authoritarian governments, placing them in a delicate political situation. The corporations are blamed for the abuses committed by government security forces attempting to allow the corporation to do business in the country. Continued ATS litigation that seeks to hold corporations liable for the actions of governments with poor human rights records could result in multinational corporations simply pulling out of those countries, which are often in desperate need of foreign investment and jobs. *See, e.g., Khulumani*, 504 F.3d at 297 (2d Cir. 2007) (Korman, J., concurring in part and dissenting in

part), *aff'd, American Isuzu Motors, Inc. v. Ntsebeza*, 128 S. Ct. 2424 (2008) (noting the "chilling effect that actions of this kind may have on future foreign investment in developing countries."); GARY CLYDE HUFBAUER & NICHOLAS K. MITROKOSTAS, AWAKENING MONSTER: THE ALIEN TORT STATUTE OF 1789 40 (2003) ("Conservatively we calculate that $55 billion of U.S. [foreign direct investment] could be deterred by ATS suits.").

Some ATS suits seek to hold corporations responsible for the actions of third parties, such as licensees and suppliers, which may have a business relationship with the corporation, but are not part of its corporate structure. *See, e.g. Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252 (11th Cir. 2009) (claims against Coca-Cola include acts committed by independent bottlers in Colombia); *Turedi v. Coca-Cola Co.*, 343 F. App'x 623 (2d Cir. 2009) (claims against Coca-Cola involve acts committed by Turkish police on behalf of independent Turkish companies licensed to bottle and deliver Coca-Cola products); *Doe v. Nestle, S.A.*, 748 F. Supp. 2d 1057 (ATS claims brought against Nestle for allegedly purchasing cocoa from and providing support to independent farms in the Ivory Coast that used child labor); *Doe I v. Wal-Mart Stores, Inc.*, No. 05-7307 (C.D. Cal. filed Dec. 23, 2005) (claims brought against Wal-Mart for the poor working conditions at suppliers' garment factories in China, Bangladesh, Indonesia, Swaziland, and Nicaragua).[12]

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[12] Several recent ATS cases have been brought by domestic or farm workers alleging various kinds of employer misconduct. Although some of the alleged misconduct actually takes place in the United States, other suits

III. ATS Lawsuits Unfairly Cause Corporations to Suffer Notoriety and Reputational Damage

Being accused of genocide in federal court causes significant reputational harm, regardless of the actual merits of the allegations. Companies named as defendants in ATS suits are routinely accused of the vilest categories of misconduct – genocide, war crimes, torture, and crimes against humanity – judged by a civil and not criminal standard of proof, without the exercise of prosecutorial discretion, based on conduct usually thousands of miles, and perhaps decades, away by often unrelated parties out of their control. The closing paragraph of Petitioners' brief illustrates

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involve abuses occurring abroad. *See, e.g. Magnifico v. Villanueva*, 783 F. Supp. 2d 1217, 1221-22 (S.D. Fla. 2011) (citizens of the Philippines bring claims for forced labor and human trafficking after being induced to come work under coercion in the United States); *Margallo-Gans v. Farrell*, No. 09-4026 (D.S.D. filed Oct. 16, 2009) (Filipino workers who came to United States for work accuse defendants of human trafficking and involuntary servitude); *Thang Hong Luu v. Int'l Inv. Trade & Serv. Grp.*, No. 11-182 (S.D. Tex. filed Apr. 13, 2011) (claims against Vietnamese labor export companies that promised Vietnamese workers jobs in the United States); *Aguilar v. Imperial Nurseries*, No. 07-193 (D. Conn. filed Feb. 8, 2007) (plaintiffs came to the United States to work and were allegedly subjected to unsuitable conditions, coercion and intimidation); *Siswinarti v. Jennifer Shien Ng*, No. 05-4171 (D.N.J. filed Aug. 16, 2005) (plaintiff came to the United States from Indonesia to work as a domestic servant and was threatened, abused and coerced); *Ponce-Rubio v. North Brevard, Inc.*, No. 03-738 (M.D. Fla. filed Oct. 3, 2003) (claim for various breaches of work contracts brought by Mexican migrant agricultural workers).

why corporate defendants may feel they cannot treat ATS claims, no matter how attenuated or far-fetched, as frivolous or nuisance actions. Affirming the Second Circuit decision, Petitioners write, would "shield the I.G. Farbens of today's world from tort liability for complicity in international law violations such as genocide or crimes against humanity[.]" Pet'rs'. Br. at 61. Although Chief Judge Jacobs focused on pressures to settle ATS cases, an equally powerful impetus may in fact be for a corporate defendant to defend itself vigorously, as perhaps reflected in the length of time such cases last.

The reputational harm that arises from public outcries against corporations accused of the type of conduct alleged in ATS suits is not merely a hit to the character of the corporation. The impact of such publicity undermines the ability of a corporation to function normally and provide goods and services to the public. Multinational corporations facing ATS suits, as pointed out by Judge Jacobs below, may need to maintain high contingency reserves to cover the potential liability, which negatively impacts the corporations in a variety of ways, including the ability to seek investors, and to serve its shareholders and employees.

The reputational hit that may be taken by corporate defendants is illustrated by the negative and overheated publicity generated by accusations of genocide and torture. *See, e.g., Rio Tinto Called into PNG War Crimes Case*;[13] *Suit in U.S. Over Murders*

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[13] ASIA PULSE, Oct. 27, 2011.

in Colombia;[14] *Colombian Killings Land U.S. Company in American Court*;[15] *Outside Investors Face 'Slave Labor' Suit*;[16] *Oil Giant Sued Over Aceh Evils*;[17] *Lawsuit Says Exxon Aided Rights Abuses*;[18] *Exxon 'Helped Torture in Indonesia'*;[19] *Coca-Cola Accused of Near-Criminal Collusion in Egypt's Anti-Jewish Ethnic Cleansing*;[20] *Shell 'Played Role in Activist Executions'*;[21] *Murders May Lead to Damages Tailspin for Chiquita*;[22] *Rio Tinto Genocide Claims Reinstated by U.S. Appeals Court*;[23]

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14 N.Y. TIMES, July 13, 2007, at C4.

15 Kyle Whitmire, WALL ST. J., Oct. 6, 2003, at A1.

16 Tom Carter, WASH. TIMES, Apr. 9, 2001, at 11.

17 WEEKEND AUSTRALIAN, June 23, 2001, at 11.

18 Neela Banerjee, N.Y. TIMES, June 21, 2001, at C1.

19 BBC NEWS, June 22, 2001, http://news.bbc.co.uk/2/hi/business/1401733.stm.

20 Edwin Black, CUTTING EDGE NEWS, Sept. 21, 2009, http://www.thecuttingedgenews.com/index.php?article=11608.

21 Mike Pflanz, TELEGRAPH, May 25, 2009, http://www.telegraph.co.uk/finance/newsbysector/energy/5383923/Shell-played-role-in-activist-executions.html.

22 Erik Larson & Joshua Goodman, BLOOMBERG, Apr. 2, 2008, http://www.bloomberg.com/apps/news?pid=20601109&sid=aqsoW_J3nbOU&refer=home.

23 Karen Gullo, BLOOMBERG, Oct. 25, 2011, http://mobile.bloomberg.com/news/2011-10-25/rio-tinto-genocide-claims-reinstated-by-u-s-appeals-court-1-.

Indonesia Torture Case vs ExxonMobil Revived;[24] *'Barclays Financed the Slave Trade'*;[25] *Coke is Death: The Softdrink Giant's Abysmal Human Rights Record is Finally Catching Up With It.*[26]

The blogosphere rhetoric is even harsher and more sensational. Blogosphere reaction to alleged corporate complicity in international human rights abuses often will show up in any internet search of the corporation's name, adding to the far-reaching prejudicial impact of such suits. *See, e.g., Indonesia – Exxon Oil Faces Murder Charges*;[27] *Fueling Genocide: Talisman Energy and the Sudanese Slaughter*;[28] *Coca-Cola's Use of Paramilitary Death Squads in Colombia*;[29] *The Case Against Shell: 'The Hanging of Ken Saro-Wiwa Showed the True Cost of*

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24 Jonathan Stempel, REUTERS, July 8, 2011, http://www.reuters.com/article/2011/07/08/us-exxonmobil-indonesia-idUSTRE76744G20110708.

25 Stuart Graham, MAIL & GUARDIAN ONLINE, May 28, 2005, http://mg.co.za/article/2005-05-28-barclays-financed-the-slave-trade.

26 Michael Blanding, NATION, April 19, 2006, *available at* http://www.alternet.org/story/34976/coke_is_death/?page=2

27 FACT OVER FICTION (July 9, 2011), http://www.factoverfiction.com/article/1109.

28 Gabriel Katsh, MULTINATIONAL MONITOR (Oct. 2000), http://www.multinationalmonitor.org/mm2000/102000/katsh.html.

29 Soaraway, BUZZNET (Jan. 30, 2007), http://soaraway.buzznet.com/user/journal/108568/coca-colas-use-paramilitary-death/.

Oil';[30] *How Shell Promotes Criminal Gangs in Niger Delta*;[31] *Coca-Cola is Guilty of 'Jewish Persecution Denial'*;[32] *The Evil Behind Coca-Cola*;[33] *Does Torture Go Better With Coke?*[34]

The depiction of ATS corporate defendants as the "I.G. Farbens of today" is inconsistent with the commitments by many companies to corporate social responsibility and to standards based on international human rights and labor rights norms.[35] Along with the cost of litigation, the

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30 AXIS OF LOGIC (June 4, 2009), http://axisoflogic.com/artman/publish/Article_55924.shtml.

31 Maureen Chigbo, NEWSWATCH (Oct. 27, 2011), http://www.newswatchngr.com/index.php?option=com_content&task=view&id=3628&Itemid=1.

32 Bataween, POINT OF NO RETURN (Nov. 22, 2009), http://jewishrefugees.blogspot.com/2009/11/coca-cola-is-guilty-of-jewish.html.

33 Natalie Fine, THE WESLEYAN ARGUS (Nov. 9, 2010), http://wesleyanargus.com/2010/11/09/the-evil-behind-coca-cola/.

34 Shirah, UNBOSSED (Nov. 22, 2005), http://unbossed.com/?p=410.

35 *See, e.g., SPDC wins two Corporate Social Responsibility Awards*, SHELL (Sept. 29, 2010), http://www.shell.com.ng/home/content/nga/aboutshell/media_centre/news_and_media_releases/2010/csr_award; *Society*, SHELL, http://www.shell.co.uk/home/content/gbr/environment_society/shell_in_the_society/ (last visited Feb. 1, 2012); *Social Responsibility*, CHIQUITA, http://www.chiquita.com/The-Chiquita-Difference/Social-Responsibility.aspx (last visited Feb. 1, 2012); *Workplace and Human Rights*, COCA-COLA CO, http://www.thecocacolacompany.com/sustainability

practical consequences of being compared to Hitler and Eichmann are significant.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

ANNE E. COHEN
(Counsel of Record)
aecohen@debevoise.com
DAVID W. RIVKIN
EROL N. GULAY
SUSAN E. MOSER
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
(212) 909-6000

Attorneys for Amicus Curiae

Of Counsel:
HUGH F. YOUNG, JR.
PRODUCT LIABILITY
ADVISORY COUNSEL, INC.
1850 Centennial Park Drive
Suite 510
Reston, VA 20191
(703) 264-5300

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report/in-our-company/healthy-communities/workplace-and-human-rights.html (last visited Feb. 1, 2012); *Global Award for Sustainability*, http://goldenpeacockawards.com/past-winners/global-award-for-sustainability.html (last visited Feb. 1, 2012); *2009 Performance Recognition*, CHEVRON, http://www.chevron.com/globalissues/corporateresponsibility/2009/performancerecognition/ (last updated May, 2010); *Awards in Citizenship 2010*, EXXONMOBIL, http://www.exxonmobil.com/Corporate/community_ccr_awards.aspx (last visited Feb. 1, 2012); Occidental Petroleum Corporation 2009 Social Responsibility Report at 9, *available at* http://www.oxy.com/sr/Documents/OxySR_09.pdf.

APPENDIX

APPENDIX A

LIST OF CURRENT CORPORATE MEMBERS OF PLAC

3M

Altec, Inc.

Altria Client Services Inc.

Astec Industries

Bayer Corporation

Beretta U.S.A. Corp.

BIC Corporation

Biro Manufacturing Company, Inc.

BMW of North America, LLC

Boehringer Ingelheim Corporation

The Boeing Company

Bombardier Recreational Products, Inc.

BP America Inc.

Bridgestone Americas, Inc.

Brown-Forman Corporation

Caterpillar Inc.

Chrysler Group LLC

Cirrus Design Corporation

CLAAS of America Inc.

Continental Tire the Americas LLC

Cooper Tire & Rubber Company

Crown Cork & Seal Company, Inc.

Crown Equipment Corporation

Daimler Trucks North America LLC

Deere & Company

The Dow Chemical Company

E.I. DuPont du Nemours and Company

Emerson Electric Co.

Engineered Controls International, LLC

Environmental Solutions Group

Estee Lauder Companies

Exxon Mobil Corporation

FMC Corporation

Ford Motor Company

General Electric Company

General Motors Corporation

GlaxoSmithKline

The Goodyear Tire & Rubber Company

Great Dane Limited Partnership

Harley-Davidson Motor Company

Hawker Beechcraft Corporation

Honda North America, Inc.

Hyundai Motor America

Illinois Tool Works Inc.

Isuzu North America Corporation

Jaguar Land Rover North America, LLC

Jarden Corporation

Johnson & Johnson

Johnson Controls, Inc.

Kawasaki Motors Corp., U.S.A.

Kia Motors America, Inc.

Kolcraft Enterprises, Inc.

Lincoln Electric Company

Magna International Inc.

Marucci Sports, L.L.C.

Mazak Corporation

Mazda Motor of America, Inc.

Medtronic, Inc.

Merck & Co., Inc.

Meritor WABCO

Michelin North America, Inc.

Microsoft Corporation

Mitsubishi Motors North America, Inc.

Mueller Water Products

Mutual Pharmaceutical Company, Inc.

Navistar, Inc.

Niro Inc.

Nissan North America, Inc.

Novartis Pharmaceuticals Corporation

PACCAR Inc.

Panasonic Corporation of North America

Pella Corporation

Pfizer Inc.

Polaris Industries, Inc.

Porsche Cars North America, Inc.

Purdue Pharma L.P.

Remington Arms Company, Inc.

RJ Reynolds Tobacco Company

Schindler Elevator Corporation

SCM Group USA Inc.

Shell Oil Company

The Sherwin-Williams Company

Smith & Nephew, Inc.

St. Jude Medical, Inc.

Stanley Black & Decker, Inc.

Subaru of America, Inc.

Techtronic Industries North America Inc.

Teva Pharmaceuticals USA, Inc.

Thor Industries, Inc.

TK Holdings Inc.

The Toro Company

Toyota Motor Sales, USA, Inc.

Vermeer Manufacturing Company

The Viking Corporation

Volkswagen Group of America, Inc.

Volvo Cars of North America, Inc.

Whirlpool Corporation

Yamaha Motor Corporation, U.S.A.

Yokohama Tire Corporation

Zimmer, Inc.

APPENDIX B

TABLE OF ATS CASES BROUGHT AGAINST CORPORATE DEFENDANTS

This table sets out all cases identified by *amicus* as alleging claims under the Alien Tort Statute against corporate defendants. The data reflected in the table – the number of named corporate defendants, number of law firms involved in the litigation, and the duration of the case from filing to most recent status or final disposition – comes primarily from district court docket sheets available on PACER.

Shaded cases were included in the average length-of-time calculation discussed on pages 5-6, *supra*. These cases brought substantive claims alleging a well-established violation of international law, such as genocide, war crimes, torture, extrajudicial killing, crimes against humanity, and others. Cases in bold are those that are still open and pending.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
***Sarei v. Rio Tinto, PLC*, No. 00-11695, 2011 WL 5041927 (9th Cir. Oct. 25, 2011)**	2	4 2 (P) 2 (D)	4	11 yrs.

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[1] Case citations refer to the most recent reported decision; docket numbers are from the district court.

[2] This column lists the number of corporate defendants named in the lawsuit.

[3] Law firm data comes from district court docket sheets. The numbers reflect the total number of law firms representing plaintiffs and corporate defendants. These figures include non-profit organizations, non-governmental organizations, law school clinics, and other legal service providers that may have represented a plaintiff or corporate defendant. Shaded cases break out the number of law firms that represented plaintiffs and corporate defendants.

[4] This data comes from district court docket sheets. It reflects the number of times the case was appealed to a higher court.

[5] The duration reflects how long the ATS claims survived. This data is based on the most specific information available from reported cases and docket sheets.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Orkin v. Swiss Confederation, No. 09-10013, 2011 WL 4822343 (2d Cir. Oct. 12, 2011)	2	2 1 (P) 1 (D)	1	1 yr., 10 mos.
***Al Shimari v. CACI Intern., Inc.*, No. 08-827, 658 F.3d 413 (4th Cir. 2011)**	3	6 2 (P) 4 (D)	2	3 yrs., 1 mo.
Aziz v. Alcolac, Inc., No. 10-1908, 658 F.3d 388 (4th Cir. 2011)	3	6 3 (P) 3 (D)	1	2.5 yrs.
***Doe v. Exxon Mobil Corp.*, No. 07-1022, 654 F.3d 11 (D.C. Cir. 2011)**	4	5 3 (P) 2 (D)	2	4 yrs., 1 mo.
Prince Hotel, SA v. Blake Marine Group, No. 10-0424, 433 Fed. Appx. 706 (11th Cir. 2011)	1	3 1 (P) 2 (D)	1	1 yr.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Baloco ex rel. Tapia v. Drummond Co., Inc., No. 09-16216, 640 F.3d 1338 (11th Cir. 2011)	2	5 3 (P) 2 (D)	1	2 yrs., 2 mos.
Bauman v. DaimlerChrysler Corp., No. 04-194, 644 F.3d 909 (9th Cir. 2011)	2	7 5 (P) 2 (D)	1	7 yrs., 4 mos.
Liu Bo Shan v. China Const. Bank Corp., 421, No. 09-8566, Fed. Appx. 89 (2d Cir. 2011)	1	3 2 (P) 1 (D)	1	1 yr., 7 mos.
Kiobel v. Royal Dutch Petroleum Co., No. 02-7618, 621 F.3d 111 (2d Cir. 2010)	3	3 2 (P) 1 (D)	3	9 yrs., 4 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
***Bowoto v. Chevron Corp.*, No. 99-2506, 621 F.3d 1116 (9th Cir. 2010)**	3	18 13 (P) 5 (D)	3	8 yrs.
Mohamed v. Jeppesen Dataplan, Inc., No. 07-2798, 614 F.3d 1070 (9th Cir. 2010)	1	4 3 (P) 1 (D)	3	4 yrs.
Presbyterian Church Of Sudan v. Talisman Energy, Inc., No. 01-9882, 582 F.3d 244 (2d Cir. 2009)	1	6 3 (P) 3 (D)	3	9 yrs.
Saleh v. Titan Corp., Nos. 04-1248, 05-1165, 580 F.3d 1 (D.C. Cir. 2009)	5	5 3 (P) 2 (D)	1	4 yrs., 3 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Aldana v. Del Monte Fresh Produce N.A., Inc., No. 01-3399, 578 F.3d 1283 (11th Cir. 2009)	5	4 3 (P) 1 (D)	2	8 yrs.
Jama v. Esmor Correctional Services, Inc., No. 97-3093, 577 F.3d 169 (3d Cir. 2009)	1	4 2 (P) 2 (D)	3	13 yrs.
Sinaltrainal v. Coca-Cola Co., Nos. 01-3208, 02-20258, 02-20259, 02-20260, 578 F.3d 1252 (11th Cir. 2009)	7	12 6 (P) 6 (D)	1	8 yrs., 1 mo.
Turedi v. Coca-Cola Co., No. 05-9635, 343 Fed. Appx. 623 (2d Cir. 2009)	3	3 1 (P) 2 (D)	1	3 yrs., 8 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Wiwa v. Shell Petroleum Dev. Co. of Nigeria Ltd., Nos. 96-8386, 01-1909, 02-7618, 335 Fed. Appx. 81 (2d Cir. 2009)	3	8 6 (P) 2 (D)	2	13 yrs., 7 mos.
Abdullahi v. Pfizer, Inc., No. 01-8118, 562 F.3d 163 (2d Cir. 2009)	1	3 1 (P) 2 (D)	2	9 yrs., 6 mos.
Abagninin v. AMVAC Chemical Corp., No. 07-56326, 545 F.3d 733 (9th Cir. 2008)	7	5 1 (P) 4 (D)	1	2 yrs.
Vietnam Ass'n for Victims of Agent Orange v. Dow Chemical Co., No. 04-400, 517 F.3d 104 (2d Cir. 2008)	36	20 9 (P) 11 (D)	1	4 yrs.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Khulumani v. Barclay Nat. Bank Ltd., Nos. 02-10062, 02-4712, 02-6218, 03-1023, 03-1024, 03-1025, 03-1026, 03-4524, 02-1499, 509 F.3d 148 (2d Cir. 2007)	58	11 5 (P) 6 (D)	2	9 yrs.
Hereros ex rel. Riruako v. Deutsche Afrika-Linien Gmblt & Co., No. 05-1872, 232 Fed. Appx. 90 (3d Cir. 2007)	1	2 1 (P) 1 (D)	1	2 yrs.
Bano v. Union Carbide Corp., No. 99-11329, 198 Fed. Appx. 32 (2d Cir. 2006)	1	7 6 (P) 1 (D)	3	28 yrs.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Flores v. Southern Peru Copper Corp., No. 00-9812, 343 F.3d 140 (2d Cir. 2003)	1	2 1 (P) 1 (D)	1	3 yrs.
Deutsch v. Turner Corp., No. 00-4405, 317 F.3d 1005 (9th Cir. 2003)[6]	52	42	N/A	N/A
Aguinda v. Texaco, Inc., No. 93-7527, 303 F.3d 470 (2d Cir. 2002)	1	4 3 (P) 1 (D)	4	13 yrs.

[6] This case was part of a series of cases brought against German and Japanese corporations doing business during the Second World War for their alleged complicity in war crimes. Some of the cases were consolidated, while others were not. Due to the difficulty in determining a single filing date and the number of times any or all of the relevant actions were appealed, the table shows only the number of corporate defendants and law firms that participated in the cited case.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Bigio v. Coca-Cola Co., No. 97-2858, 239 F.3d 440 (2d Cir. 2000)	2	4 3 (P) 1 (D)	3	8 yrs.
Beanal v. Freeport-McMoran, Inc., No. 96-1474, 197 F.3d 161 (5th Cir. 1999)	2	4 2 (P) 2 (D)	1	3.5 yrs.
Hamid v. Price Waterhouse, Nos. 92-56085, 92-56198, 92-56199, 51 F.3d 1411 (9th Cir. 1995)	21	4	1	4 yrs.
Benjamins v. British European Airways, No. 77-7201, 572 F.2d 913 (2d Cir. 1978)	3	3	0	4 yrs.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Genocide Victims of Krajina v. L-3 Services, Inc., No. 10-5197, 2011 WL 3625055 (N.D. Ill. Aug. 17, 2011)	3	5 2 (P) 3 (D)	0	1 yr.
In re Chiquita Brands Intern., Inc. Alien Tort Statute and Shareholder Derivative Litig., No. 08-01916, 792 F. Supp. 2d 1301 (S.D. Fla. 2011)	2	48 41 (P) 7 (D)	0	3 yrs., 4 mos.
Holocaust Victims of Bank Theft v. Magyar Nemzeti Bank, No. 10-1884, 2011 WL 1900340 (N.D. Ill. May 18, 2011)	7	10 2 (P) 8 (D)	5	1.5 yrs.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Magnifico v. Villanueva, No. 10-80771, 783 F. Supp. 2d 1217 (S.D. Fla. 2011)	2	4 3 (P) 1 (D)	0	1 yr., 2 mos.
Abecassis v. Wyatt, No. 09–3884, 785 F. Supp. 2d 614 (S.D. Tex. 2011)	5	7	0	2 yrs.
Mastafa v. Chevron Corp., No. 10-5646, 759 F. Supp. 2d 297 (S.D.N.Y. 2010)	2	4 1 (P) 3 (D)	1	3 mos.
Flomo v. Firestone Natural Rubber Co., No. 06-00627, 744 F. Supp. 2d 810 (S.D. Ind. 2010)	5	5 3 (P) 2 (D)	1	5 yrs., 3 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Arias v. Dyncorp, Nos. 01-1908, 07-1042, 738 F. Supp. 2d 46 (D.D.C. 2010)	4	5 4 (P) 1 (D)	0	10 yrs.
In re Terrorist Attacks on September 11, 2001, No. 03-1570, 740 F. Supp. 2d 494 (S.D.N.Y. 2010)	160	90	2	8 yrs.
Doe v. Nestle, S.A., No. 05-5133, 748 F. Supp. 2d 1057 (C.D. Cal. 2010)	7	10 4 (P) 6 (D)	1	5 yrs., 2 mos.
Estate of Manook v. Research Triangle Institute, Intern., Nos. 10-72, 10-73, 759 F. Supp. 2d 674 (E.D.N.C. 2010)	2	6	1	3 yrs., 2 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Al-Quraishi v. Nakhla, No. 08-1696, 728 F. Supp. 2d 702 (D. Md. 2010)	3	6 4 (P) 2 (D)	2	3.5 yrs.
Linde v. Arab Bank, PLC, No. 04-2799, 269 F.R.D. 186 (E.D.N.Y. 2010)	4	17 11 (P) 6 (D)	0	7.5 yrs.
Licci v. American Exp. Bank Ltd., No. 08-7253, 704 F. Supp. 2d 403 (S.D.N.Y. 2010)	2	4	1	3 yrs., 5 mos.
Adhikari v. Daoud & Partners, No. 09-1237, 2010 WL 744237 (S.D. Tex. Mar. 1, 2010)	10	8 4 (P) 4 (D)	0	2 yrs., 8 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Tamam v. Fransabank Sal, No. 08-6156, 677 F. Supp. 2d 720 (S.D.N.Y. 2010)	5	7 1 (P) 6 (D)	0	1.5 yrs.
In re XE Services Alien Tort Litig., Nos. 09-615, 09-616, 09-617, 09-618, 09-645, 665 F. Supp. 2d 569 (E.D. Va. 2009)	11	4 2 (P) 2 (D)	0	7 mos.
In re South African Apartheid Litig., No. 02-MDL-1499, 633 F. Supp. 2d 117 (S.D.N.Y. 2009)	43	27 9 (P) 18 (D)	2	9 yrs., 11 mos.
Al Shimari v. CACI Premier Tech., Inc., No. 08-827, 657 F. Supp. 2d 700 (E.D. Va. 2009)	3	6 2 (P) 4 (D)	2	3 yrs., 5 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Roe v. Bridgestone Corp., No. 06-0627, 257 F.R.D. 159 (S.D. Ind. 2009)	6	5 3 (P) 2 (D)	1	5 yrs., 9 mos.
Chowdhury v. WorldTel Bangladesh Holding, Ltd., No. 08-1659, 588 F. Supp. 2d 375 (E.D.N.Y. 2008)	1	2 1 (P) 1 (D)	1	3 yrs., 9 mos.
Licea v. Curacao Drydock Co., Inc., No. 06-22128, 584 F. Supp. 2d 1355 (S.D. Fla. 2008)	1	7 4 (P) 3 (D)	1	4 yrs., 5 mos.
Aikpitanhi v. Iberia Airlines of Spain, No. 07-14468, 553 F. Supp. 2d 872 (E.D. Mich Mar. 31, 2008)	1	3 2 (P) 1 (D)	0	5 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Corrie v. Caterpillar, Inc., No. 05-5192, 403 F. Supp. 2d 1019 (W.D. Wash. 2005)	1	5 3 (P) 2 (D)	0	8 mos.
Ibrahim v. Titan Corp., No. 04-1248, 391 F. Supp. 2d 10 (D.D.C. 2005)	2	5	1	7 yrs.
***Mujica v. Occidental Petroleum Corp.*, No. 03-2860, 381 F. Supp. 2d 1164 (C.D. Cal. 2005)**	2	10 5 (P) 5 (D)	1	8 yrs., 8 mos.
Daventree Ltd. v. Rep. of Azerbaijan, No. 02-6356, 349 F. Supp. 2d 736 (S.D.N.Y. 2004)	1	3	0	4 yrs.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Arndt v. UBS AG, No. 04-751, 342 F. Supp. 2d 132 (E.D.N.Y. 2004)	2	4 3 (P) 1 (D)	0	7 mos.
***In re African-American Slave Descendants Litig.*, No. MDL-1491, No. 02-7764, 304 F. Supp. 2d 1027 (N.D. Ill. 2004)**	18	24	1	9 yrs.
Maugein v. Newmont Mining Corp., No. 02-204, 298 F. Supp. 2d 1124 (D. Colo. 2004)	4	8 1 (P) 7 (D)	1	3 yrs.
Anderman v. Federal Rep. of Austria, No. 01-01769, 256 F. Supp. 2d 1098 (C.D. Cal. 2003)	7	12 1 (P) 11 (D)	1	2.5 yrs.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Estate of Rodriquez v. Drummond Co., Inc., No. 02-0665, 256 F. Supp. 2d 1250 (N.D. Ala. 2003)	2	5 2 (P) 3 (D)	3	5.5 yrs.
Abrams v. Societe Nationale des Chemins de Fer Francais, No. 00-5326, 175 F. Supp. 2d 423 (E.D.N.Y. 2001)	1	4	1	5.5 yrs.
Mendonca v. Tidewater, Inc., No. 00-2284, 159 F. Supp. 2d 299 (E.D. La. 2001)	1	4	3	6 yrs.
Kruman v. Christie's Intern. PLC, No. 00-6322, 129 F. Supp. 2d 620 (S.D.N.Y. 2001)	4	7	0	9.5 yrs.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Bodner v. Banque Paribas, Nos. 97-7433, 98-7851, 114 F. Supp. 2d 117 (E.D.N.Y. 2000)	9	15 11 (P) 4 (D)	0	5 yrs.
Bao Ge v. Li Peng, No. 98-1986, 201 F. Supp. 2d 14 (D.D.C. 2000)	2	5	1	4 yrs.
Iwanowa v. Ford Motor Co., No. 98-959, 67 F. Supp. 2d 424 (D.N.J. 1999)	2	3 1 (P) 2 (D)	1	1.5 yrs.
Roe v. Unocal Corp., No. 96-6112, 70 F. Supp. 2d 1073 (C.D. Cal. 1999)	3	10 6 (P) 4 (D)	1	4 yrs.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
National Coalition Government of Union of Burma v. Unocal, Inc., No. 96-6112, 176 F.R.D. 329 (C.D. Cal. 1997)	3	10 6 (P) 4 (D)	1	4 yrs.
Eastman Kodak Co. v. Kavlin, Nos. 96-2218, 96-2219, 978 F. Supp. 1078 (S.D. Fla. 1997)	1	4 2 (P) 1 (D)	0	2.5 yrs.
Pleadings[7]				
Wang Xiaoning v. Yahoo! Inc., No. 07-2151, 2007 WL 1511131 (N.D. Cal. filed Apr. 18, 2007)	3	2	1	7 mos.

[7] The remaining cases are ones for which there are no reported decisions, but which have docket sheets and filings.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Guzman-Martinez v. Corrections Corp. of America, No. 11-2390, 2011 WL 6062622 (D. Ariz. filed Dec. 5, 2011)	1	1	0	1.5 mos.
Saldana v. Occidental Petroleum Corp., No. 11-8957, 2011 WL 5142961 (C.D. Cal. filed Oct. 20, 2011)	1	2	0	2 mos.
Doe v. Neveleff, No. 11-907, 2011 WL 5027754 (W.D. Tex. filed Oct. 19, 2011)	1	3	0	2 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
***Giraldo v. Drummond Co., Inc.*, No. 09-1041, 2011 WL 4863942 (N.D. Ala. filed Sept. 29, 2011)**	2	8	0	4 mos.
Lim v. Government of Singapore, No. 11-50172, 2011 WL 2428948 (N.D. Ill. filed June 14, 2011)	3	N/A	0	1 day
***Daobin v. Cisco Systems, Inc.*, No. 11-1538, 2011 WL 3962879 (D. Md. filed June 6, 2011)**	1	3	0	6 mos.
***Tymoshenko v. Firtash*, No. 11-2794, 2011 WL 1560364 (S.D.N.Y. filed Apr. 26, 2011)**	12	3	0	8 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Doe I v. Cisco Systems, Inc., No. 11-02449, 2011 WL 1338057 (E.D. Tex. filed May 19, 2011)	1	2	0	8 mos.
Hidalgo v. Siemens AG, No. 11-20107, 2011 WL 74581 (S.D. Fla. filed Jan. 11, 2011)	2	1	0	6 mos.
Ge v. Shanghai Municipal Branch Committee of Chinese Communist Party, No. 10-7964, 2010 WL 4235973 (S.D.N.Y. filed Oct. 10, 2010)	3	2	0	7 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Saharkhiz v. Nokia Corp., No. 10-912, 2010 WL 3375217 (E.D. Va. filed Aug. 16, 2010)	6	4	0	1 yr., 5 mos.
Doe v. Drummond Co., Inc., No. 09-1041, 2010 WL 2572422 (N.D. Ala. filed June 14, 2010)	2	8	0	1 yr., 8 mos.
Mohamed v. Erinys International Ltd., No. 09-3362, 2010 WL 2679426 (S.D. Tex. filed Apr. 28, 2010)	5	5	0	1 yr., 8 mos.
Bleier v. Deutschland, No. 08-6254, 2009 WL 4679371 (N.D. Ill. filed Sept. 17, 2009)	20	15	0	2 yrs., 3 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Shiguango v. Occidental Petroleum Corp., No. 06-4982, 2009 WL 2921372 (C.D. Cal. filed Aug. 10, 2006)	2	4	1	4 yrs.
Hassoon v. Xe, No. 09-647, 2009 WL 1953283 (S.D. Cal. filed Apr. 1, 2009)	10	3	0	2 mos.
Jarallah v. Xe, No. 09-631, 2009 WL 1350958 (S.D. Cal. filed Mar. 27, 2009)	22	3	0	2 mos.
Al-Razzaq v. Xe, No. 09-626, 2009 WL 1350956 (S.D. Cal. filed Mar. 26, 2009)	22	3	0	2 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Sa'adoon v. Xe, No. 09-561, 2009 WL 761253 (S.D. Cal. filed Mar. 19, 2009)	22	3	0	2 mos.
Zhen v. Yahoo!, Inc., No. 08-1068, 2009 WL 1241004 (N.D. Cal. filed Feb. 26, 2009)	3	3	1	2 yrs., 1 month
Al-Taee v. L-3 Services, No. 08-12790, 2008 WL 2598173 (E.D. Mich. filed June 30, 2008)	1	2	0	1 mo.
Zheng v. Yahoo, Inc., No. 08-1068, 2008 WL 4056779 (N.D. Cal. filed June 16, 2008)	3	3	1	2 yrs., 1 mo.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Cunzhu v. Yahoo! Inc., No. 08-1068, 2008 WL 1894039 (N.D. Cal. filed Feb. 22, 2008)	2	3	0	2 yrs., 2 mos.
***Manook v. Unity Resources Group*, No. 08-096, 2008 WL 310879 (D.D.C. filed Jan 17, 2008)**	2	5	0	4 yrs.
Sinaltrainal v. Nestle USA, Inc., No. 06-61623, 2006 WL 3668381 (S.D. Fla. filed Oct. 31, 2006)	3	1	0	1 mo.
Doe I v. Wal-Mart Stores, Inc., No. 05-07307, 2005 WL 4049637 (C.D. Cal. filed Dec. 23, 2005)	1	5	1	3 yrs., 7 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Bera v. Shell Petroleum Development Company of Nigeria Ltd., No. 11-8169, 2011 WL 5522680 (S.D.N.Y. filed Nov. 14, 2011)	4	2	0	2 mos.
Okpabi v. Royal Dutch Shell, PLC, No. 11-14572, 2011 WL 5027193 (E.D. Mich. filed Oct. 18, 2011)	2	3	0	3 mos.
Kaplan v. Al Jazeera, No. 10-5298, 2011 WL 2941526 (S.D.N.Y. filed July 18, 2011)	1	3	0	4 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Luu v. Int'l Inv. Trade & Service Group, No. 11-0182, 2011 WL 1398984 (S.D. Tex. filed Apr. 13, 2011)	2	2	0	9 mos.
Cooperhill Inv. Ltd. v. Rep. of Seychelles, No. 11-962, 2011 WL 601962 (S.D.N.Y. filed Feb. 14, 2011)	4	2	0	7 mos.
Fiouris v. Turkish Cypriot Community, No. 10-1225, 2010 WL 7378418 (D.D.C. filed July 20, 2010)	2	4	0	1 yr., 6 mos.
Diaz v. Grupo Mexico, Inc., No. 10-355, 2010 WL 1944094 (D. Ariz. filed Mar. 22, 2010)	3	4	1	1 yr., 10 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Victims of the Hungarian Holocaust v. Hungarian State Railways, No. 10-868, 2010 WL 560777 (N.D. Ill. filed Feb. 9, 2010)	1	8	1	2 yrs.
Margallo-Gans v. Farrell, No. 09-4026, 2009 WL 5120729 (D.S.D. filed Oct. 16, 2009)	2	4	0	9 mos.
Vieira v. Eli Lilly and Co., No. 09-0495, 2009 WL 3150953 (S.D. Ind. filed Sept. 25, 2009)	6	11	0	1.5 yrs.
Guanipa v. Chavez, No. 09-20999, 2009 WL 1392253 (S.D. Fla. filed May 12, 2009)	2	2	0	4 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Tamam v. Fransabank Sal, No. 08-6156, 2009 WL 3639930 (S.D.N.Y. filed Feb. 17, 2009)	5	6	0	1.5 yrs.
***Licci v. American Express Bank Ltd.*, No. 08-07253, 2009 WL 3639957 (S.D.N.Y. filed Jan. 22, 2009)**	2	4	1	3 yrs.
Ahmed v. Dubai Islamic Bank, No. 08-21564, 2008 WL 2935356 (S.D. Fla. filed June 2, 2008)	1	N/A	0	3 mos.
Aguilar v. Imperial Nurseries, No. 07-0193, 2007 WL 1183549 (D. Conn. filed Feb. 8, 2007)	3	5	0	1 yr., 4 mos.

Case Name[1]	No. Corp. Def.[2]	No. Law Firm [3]	Appeals [4]	Duration [5]
Siswinarti v. Jennifer Shien Ng, No. 05-4171, 2005 WL 2511406 (D.N.J. filed Aug. 16, 2005)	1	2	0	2 yrs., 7 mos.
Ponce-Rubio v. North Brevard, Inc., No. 03-738, 2003 WL 23772118 (M.D. Fla. filed Oct. 3, 2003)	1	5	0	1 yr., 2 mos.
Whiteman v. Fed. Rep. of Austria, No. 00-8006, 2002 WL 34593773 (S.D.N.Y. filed Nov. 12, 2002)	9	8	1	5 yrs.